

**United States Environmental Protection Agency
Region I**

IN THE MATTER OF)	DOCKET NO. 10-013
)	
City of Attleboro)	
Attleboro, Massachusetts)	
NPDES Permit No. MA0100595)	FINDINGS OF VIOLATION
)	
Proceedings under Sections 308 and)	AND
309(a)(3) of the Clean Water Act,)	
as amended, 33 U.S.C. §§ 1318 and)	ORDER FOR COMPLIANCE
1319(a)(3))	

I. STATUTORY AUTHORITY

The following Findings are made and ORDER issued pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act, as amended (the "Act"), 33 U.S.C. §§ 1318 and 1319(a)(3). Section 309(a)(3) of the Act grants to the Administrator of the U.S. Environmental Protection Agency ("EPA") the authority to issue orders requiring persons to comply with Sections 301, 302, 306, 307, 308, 318 and 405 of the Act and any permit condition or limitation implementing any of such sections in a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the Act, 33 U.S.C. § 1342. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the submission of any information required to carry out the objectives of the Act. These authorities have been delegated to EPA Region I's Regional Administrator, and in turn to the Director of the Office of Environmental Stewardship ("Director").

The Order herein is based on findings of violations of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of NPDES Permit No MA0100595. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), the Order provides a schedule for compliance which the Director has determined to be reasonable.

II. DEFINITIONS

Unless otherwise defined herein, terms used in this Order shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. § 1251 *et. seq.*, the regulations promulgated thereunder, and any applicable NPDES permit. For the purposes of this Order, "NPDES Permit" means the Attleboro, Massachusetts's NPDES Permit, No. MA0100595, all amendments or modifications thereto, and renewals thereof, as are applicable and in effect at the time.

III. FINDINGS

The Director makes the following findings of fact:

1. The City of Attleboro, Massachusetts ("City" or "Attleboro") is a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4).
2. The City is a person under Section 502(5) of the Act, 33 U.S.C. § 1362(5). The City is the owner of a publicly-owned wastewater treatment works (the "POTW"), which includes a wastewater treatment facility ("WWTF") from which it discharges pollutants, as defined in Section 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), from a point source, as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to the Ten Mile River, which flows into Narragansett Bay and then the Atlantic Ocean. All are waters of the United States as defined in 40 CFR § 122.2 and, therefore, navigable waters under Section 502(7) of the Act, 33 U.S.C. § 1362(7).
3. On June 9, 2008, the City was issued NPDES Permit No. MA0100595 by the Director of the Office of Ecosystem Protection of EPA, Region I, under the authority of Section 402 of the Clean Water Act, 33 U.S.C. § 1342.
4. Petitions for review of the Final NPDES Permit were filed with the U.S. EPA Environmental Appeals Board ("EAB") by the City and by the Rhode Island Department of Environmental Management ("RIDEM") on July 9, 2008 and July 10, 2008, respectively.
5. On August 28, 2008, pursuant to 40 C.F.R. §§ 124.16(a) and 124.60(b), EPA issued a notice identifying the following NPDES Permit conditions as contested:

- (i) average monthly total nitrogen effluent limit of 8.0 milligram per liter ("mg/l"), applied seasonally from April 1 through October 31; (ii) average monthly total phosphorus effluent limits of 0.1 mg/l and 1.0 mg/l, applied seasonally from April 1 through October 31 and from November 1 through March 31, respectively; (iii) average monthly aluminum limit; (iv) average monthly and/or daily limits for copper, silver, nickel, lead, cadmium and cyanide; (v) monitoring frequency for Whole Effluent Toxicity ("WET"); and (vi) the absence of a compliance schedule to achieve the average monthly total nitrogen effluent limit of 8.0 mg/l, the average monthly total phosphorus effluent limit of 0.1 mg/l, and the average monthly and/or daily metals limits. The RIDEM challenged whether hardness data used by the Region to calculate the NPDES Permit's limits on hardness-dependent metals were adequately representative of in-stream conditions.
6. The remaining conditions were determined to be uncontested and severable, and were placed into effect as of October 1, 2008.
 7. On January 6, 2009, the RIDEM withdrew its petition with prejudice.
 8. On September 15, 2009, the EAB denied the City's petition for review in its entirety.
 9. On September 23, 2009, the Region placed all previously stayed conditions into effect beginning October 1, 2009.
 10. Part I.A.1 of the NPDES Permit establishes effluent limitations and monitoring requirements for the discharge of treated wastewater from Outfall No. 001.
 11. The City has discharged wastewater to the Ten Mile River containing total nitrogen in excess of the limits in the NPDES Permit.
 12. The City's discharge of wastewater to the Ten Mile River containing total nitrogen in excess of the limits in the NPDES Permit occurred in violation of the NPDES Permit and in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
 13. The City has reported to the EPA and Massachusetts Department of Environmental Protection ("MassDEP") that without authorization to do so, since January 29, 2009, it has periodically discharged untreated sewage from

components of its Collection System other than the permitted WWTF Outfall 001 to the Ten Mile River.

14. The various components of the Collection System from which the City has discharged untreated sewage to the Ten Mile River are point sources.
15. Section 301(a) of the Act, 33 U.S.C. § 1311(a), makes unlawful the discharge of pollutants to waters of the United States except in compliance with, among other things, the terms and conditions of a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

IV. ORDER

Accordingly, pursuant to Sections 308 and 309(a)(3) of the Act, it is hereby ordered that:

Planning, Design, Construction, Operation and Evaluation **of the Full-Scale Pilot Plant for Nitrogen Removal**

1. By July 31, 2010, the City shall prepare and submit to the EPA and MassDEP a Technical Memorandum describing the proposed modifications to its WWTF's aeration basins that it plans to implement under a full-scale pilot to assess the ability of the WWTF to achieve compliance with the total nitrogen limits contained in its NPDES Permit. The Technical Memorandum shall also include a schematic of the WWTF that depicts the proposed changes as well as planned process control and compliance monitoring locations.
2. By December 31, 2010, the City shall complete and submit to EPA for review and to the MassDEP for review and approval, plans and specifications for a full-scale pilot plant that shall be implemented to assess the ability of the WWTF to achieve compliance with the total nitrogen limits contained in its NPDES Permit.
3. By October 31, 2011, the City shall complete the construction of the full-scale pilot plant and attain full operational levels in order to assess ability of the WWTF to achieve compliance with the total nitrogen limits contained in its NPDES Permit.

4. By December 31, 2012, the City shall submit to EPA and the MassDEP a report assessing the full-scale pilot plant operations during the previous year and its ability to achieve nitrogen removal and maintain compliance with the 8 milligram/liter total nitrogen monthly average concentration limit contained in the NPDES Permit. In the event that implementation of the full-scale pilot plant does not achieve compliance with the final NPDES Permit limits, the report shall propose interim total nitrogen, total phosphorus or total aluminum limits based upon the first year of the full-scale pilot plant operations and the City shall implement further modifications. The effectiveness of any further modifications shall be evaluated during the second year of full-scale pilot plant operations.
5. By February 28, 2014, the City shall submit a report to the EPA and MassDEP summarizing the results of the WWTF pilot program and the ability of the pilot-plant improvements to achieve compliance with the total nitrogen limits contained in its NPDES Permit. If the City determines that the continued implementation of the full-scale pilot will not result in compliance with the total nitrogen limits contained in its NPDES Permit, the report shall include a plan to comply with the limits contained in the NPDES Permit.

Interim Effluent Limitations

6. From the effective date of this Order until the earliest of: (a) December 31, 2012 or completion of the year of the full-scale pilot plant operations; (b) EPA modifies the interim limit based upon full-scale pilot plant operations; or (c) the date, if any, that EPA determines that the City has not complied with any portion of this Order, the City shall, at a minimum, comply with the monitoring requirements and interim effluent limitations for total nitrogen in **Attachment 1** of this Order.
7. The City shall also comply with all other effluent limitations, monitoring requirements and other conditions specified in the NPDES Permit for parameters not addressed in Attachment 1. It is Attleboro's obligation to properly operate and maintain its WWTF at all times.

Capacity, Management, Operation and Maintenance ("CMOM")

Program Assessment

8. By January 31, 2011, the City shall submit to the EPA and MassDEP a description of the type of the City's Collection System mapping (GIS or paper) and the last date the map(s) were updated.
9. By January 31, 2011 and by each January 31st thereafter annually until further advised in writing by EPA, the City shall submit to the EPA and MassDEP:
 - a. A summary listing of all sanitary sewer overflows ("SSOs") that have occurred during the previous calendar year, including building/private property backups that result from capacity limitations or blockages in that portion of the Collection System owned by the City. The tabular listing shall be organized chronologically and shall include the date and times on which each event was discovered and was stopped, the location by address, the source of notification (property owner, field crew, police), the causes of the event, including but not limited to infiltration/inflow, vandalism, capacity issues, the measures taken to stop the SSO and to prevent similar SSOs from occurring at the same overflow location, the estimated gallons of wastewater released, and the name of the receiving water or a description of ultimate discharge location if the unauthorized discharge did not occur to a surface water;
 - b. Copies of the annual Collection System operation and maintenance budget for the current and previous fiscal year noting the source of the funding, e.g., enterprise fund or general tax rate. Specifically indicate whether a capital replacement fund (sinking fund) has been established to provide for replacement of aging wastewater Collection System infrastructure. Provide the Collection System maintenance staffing levels for the current fiscal year noting:
 - (1) Budgeted positions;
 - (2) Vacant positions; and

- (3) Brief description of the responsibilities of each position clearly distinguishing Collection System maintenance responsibilities from responsibilities for the wastewater treatment facility or other public works operations;
- c. A description of any existing or proposed City programs designed to reduce the levels of extraneous flows and fats, oils & grease that are discharged to, or enter, the City's Collection System and the specific measures that were taken by the City under these programs during the past calendar year; and
- d. A description of any existing or proposed City easement maintenance programs for locating and uncovering lost or buried Collection System manholes and the specific measures that were taken by the City under these programs during the past calendar year.

Annual Progress Reports

- 10. Annual progress reports on the specific measures (other than those reported under Paragraph IV.9. above) that the City has taken to achieve compliance with its NPDES Permit shall be submitted to the EPA and the MassDEP by July 31st of each year from 2011 through 2014. The reports shall: (a) describe the work performed during the previous twelve-month period (July 1 through June 30); (b) include a projection of the work to be performed during the next twelve-month period (July 1 through June 30); (c) include a copy of any and all contracts signed during the previous twelve-month period for tasks related to this Order; and (d) include photographs of construction progress. The first progress report for the period ending June 30, 2011 shall be submitted to the EPA and MassDEP by no later than July 31, 2011.

V. NOTIFICATION PROCEDURES

- 1. Where this Order requires a specific action to be performed within a certain time frame, the Permittee shall submit a written notice of compliance or

noncompliance with each deadline. Notification must be mailed within fourteen (14) calendar days after each required deadline. The timely submission of a required report shall satisfy the requirement that a notice of compliance be submitted.

2. If noncompliance is reported, notification shall include the following information:
 - a. A description of the noncompliance;
 - b. A description of any actions taken or proposed by the Permittee to comply with the lapsed schedule requirements;
 - c. A description of any factors that explain or mitigate the noncompliance; and
 - d. An approximate date by which the Permittee will perform the required action.
3. After a notification of noncompliance has been filed, compliance with the past-due requirement shall be reported by submitting any required documents or providing EPA with a written report indicating that the required action has been achieved. Submissions required by this Order shall be in writing and shall be mailed to the following addresses:

USEPA - New England
Office of Environmental Stewardship
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02114-2023
Attn: Joy Hilton
and

MassDEP -- Southeast Region
20 Riverside Drive
Lakeville, MA 02347
Attn: David Burns

VI. GENERAL PROVISIONS

1. This Order does not constitute a waiver or a modification of the terms and conditions of the NPDES Permit. The NPDES Permit remains in full force and effect. EPA reserves the right to seek any and all remedies available under

Section 309 of the Act, 33 U.S.C. § 1319, as amended, for any violation cited in this Order.

2. This Order shall become effective upon receipt by the City.

06/17/10

Date

Susan Studlien

Susan Studlien, Director
Office of Environmental Stewardship